

## REMARKS/ARGUMENTS

### **Claim Amendments**

The Applicant has amended claim 1 more clearly claim that to which the Applicant is entitled. Applicant respectfully submits no new matter has been added. Accordingly, Claims 1-20 and 23-41 are pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

### **Claim Rejections – 35 U.S.C. § 103 (a)**

The Examiner rejected claims 1-16, 18, 20-38 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Yano, et al (US 6,701,372) in view of Jain, et al. ("End-to-End Available Bandwidth: Measurement Methodology, Dynamics, and Relation with TCP Throughput). The Applicant respectfully traverses the rejection of these claims.

As provided in MPEP § 2143, "[t]o establish a prima facie case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations." The Applicant respectfully submits that the Yano and Jain references, whether considered individually or as a combination, fail to teach or suggest each and every element of the presently pending independent claims.

The Applicant's present invention discloses an Analysis Entity (AE) that receives data packets and modulates the packets according to a particular modulation rate and then sends the packets to a receiving entity. The AE compares the sending rate of the sending entity and the receiving rate of a receiving entity. The comparison helps determine an "appearance" of the rate modulation of the receiving rate. This knowledge of the relation and the determined appearance of the rate modulation in the receiving rate provide the analysis entity with information to differentiate the case that the transmission rate of the transmission link is equal or above the sending rate thus, providing information about transmission capability of the link between the AE and the receiving entity. "Thus, obtaining the information about the transmission capability "on-line" reveals up-to-date information and offers the opportunity for the analysis entity to initiate appropriate actions based on the obtained information about the transmission

capability as early as possible." (Paragraph [0058])Information regarding transmission capability (Yano's determined transmission rate) is based on the relation and appearance of the rate modulation.

The Yano reference discloses that a transmission rate is determined and supplied to a data transmitter. A receiver report is sent from the receiver to a buffer data volume calculator and a rate change unit determines a transmission rate on the basis of calculations by the buffer data volume calculator that "designates" a transmission rate to the transmitter (Col. 3, lines 14-23). That is, a new rate using the report from the receiver is determined by the transmitting terminal and the data is transferred at the new rate.

A distinguishable difference between the present invention and the Yano reference is that the receiver in Yano sends a report to the transmitter regarding the volume of data that has been received versus the volume of data that has been sent in a period of time. This is after the fact; the receiver is providing information to determine a satisfactory data rate for the transmission link. In contrast, as discussed above, in the present invention the sending rate is modulated and the receiving rate is checked by the AE. "As an example, the sending entity SE may not be interested in receiving information about the transmission rate if the analysis entity obtains that the transmission rate exceeds or is equal to the sending rate. If the predetermined criteria are not matched the analysis entity can explicitly." (paragraph [0059])

Yano is cited as disclosing the Applicant's claimed Analysis Entity (Yano: Col. 3, line 2- Col. 4, line 19; Fig. 1). The Applicant has reviewed the cited portion and respectfully disagrees with the Examiner's interpretation. Fig. 1 discloses a transmitting terminal 1-1, a receiving terminal 1-2 and a network connecting the two. Nowhere in Fig. 1, in any of the other figures or in the cited portion of the Description of Yano is an Analysis Entity disclosed. Nor does the Description of Fig. 1 disclose a combination of parts that disclose the recited steps of the Analysis Entity as claimed. The Applicant describes the Analysis Entity throughout the Applicant's Specification including, e.g., Figures 5a, b and c and the Description of those figures.

The argument is made that the Jain reference discloses a receiving rate and a sending rate to determine a relation then obtaining information about the transmission capability based on the relation (Avail-bw detection and measurement). The Applicant respectfully disagrees with the Examiner's interpretation of the cited portion of Jain. Jain describes "...the TOPP and SLoPS techniques that are based on observation of queueing delays of successive periodic probing packets [that] increase when the probing rate is higher than the avail-bw in the path." The input and output rates of packet pairs are compared, not the sending and receiving rates wherein the sending rate includes a modulated rate. And, detection of the modulated rate in the receiving rate dictates certain adjustments by the AE.

As discussed above, claim 1 contains elements which are not found in the either Yano or the Jain references. It is submitted that the combination of Yano and Jain do not teach or suggest all of the claim elements of claim 1. Consequently, the Office Action does not factually support a *prima facie* case of obviousness. The Applicant, therefore, respectfully requests the allowance of claim 1, analogous independent claim 20 and the respective dependent claim 16, 18, 21-38 and 41.

The Examiner rejected claims 17, 19, 39 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Yano, et al (US 6,701,372) in view of Jain, et al. ("End-to-End Available Bandwidth: Measurement Methodology, Dynamics, and Relation with TCP Throughput) as applied to claims 1 and 14 above, and further in view of Anandakumar, et al (US2004/0252701). The Applicant respectfully traverses the rejection of these claims.

Claims 17, 19, 39 and 41 depend from independent claims 1 and 20 and recite further limitations in combination with the novel elements of claims 1 and 20. The Anandakumar reference is cited for disclosing the use of proxies and method of measuring and analyzing transmission rates and capabilities. The Applicant respectfully submits that Anandakumar does not teach or suggest the elements that are lacking in the Yano and Jain references. Therefore, the allowance of claims 17, 19 38 and 41 is respectfully requested.

**CONCLUSION**

In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for all pending claims.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,

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